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CA 621

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench

Second Appeal No. 123 Of 2006.

APPELLANT :- Balaji Swami, Shri Dudhadhari Math,
PLAINTIFF Registered Public Trust, Raipur (C.G.),
Through Shri Rajshree Mahant Ramsunder Das, Guru Shri Late Mahant Vaishnavdas, Dudhadhari Math, Raipur.

R.R. No. 843/06 Presented by Shri J.K. Gupta dated 28/3/06

V E R S U S

RESPONDENTS :- 1. Smt. Sushila Bai, wife of Nanak Sinha,
DEFENDENTS aged about 40 years, resident of Near Station, Village Abhanpur, District Raipur (Chhattisgarh),
2. State of Chhatttisgarh, Through Collector Raipur, District Raipur (Chhattisgarh).

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APPEAL UNDER SECTION 100 OF CODE OF CIVIL PROCEDURE

(19)

HIGH COURT OF CHHATTISGARH, BILASPUR

SECOND APPEAL NO.123/2006

Shri Balaji Swami

Vs.

Smt. Sushila Bai and another

ORDER

Post for 20.6.2006

19.6.2006

Sd/-
Sunil Kumar Sinha
Judge

20/6/06

HIGH COURT OF CHHATTISGARH, BILASPUR

SECOND APPEAL NO.123/2006

Shri Balaji Swami

Vs.

Smt. Sushila Bai and another

Appearance:

Shri Pankaj Agrawal, counsel for the Appellant.

ORDER
(20.6.2006)

SUNIL KUMAR SINHA, J

(1) This is the plaintiff's second appeal, filed under section 100 of the Code of Civil Procedure against the judgment and decree dated 28.02.2006 passed in Civil Appeal No.59-A/2005 by the District Judge, Raipur (C.G) arising out of judgment and decree dated 07.10.2005 passed in Civil Suit No.80-A/2005 by the 1st Civil Judge, Class-II, Raipur. The plaintiff lost in both the courts.

(2) The brief facts are that the plaintiff/appellant filed a suit for declaration of title, vacant possession and mesne profit of Rs.500/- with future mesne profit @ Rs.20/- per day from the date of institution of the suit till recovery of possession, interia alia on the grounds that the suit land bearing Khasra No.499/42 belongs to the plaintiff, which is a public trust and the defendant no.1 encroached upon 600 sq.ft. of the aforesaid Khasra Number in the year 1996 and raised construction over it.

(3) The defendant no.1 denied the contentions of the plaintiff, especially the factum of encroachment. The trial Court dismissed the suit recording a finding that the plaintiff could not establish that the defendant no.1 has encroached upon the said portion of Khasra No.499/42 belonging to the plaintiff. The appellate Court also took the same view.

(4) Learned counsel for the appellant argued that the finding in relation to factum of encroachment is perverse. The contention is that the plaintiff has established that defendant no.1 has encroached upon the said portion of Khasra No.499/42.

(5) I have gone through the records of the two courts below. It appears that for establishing the factum of encroachment, the plaintiff examined two witnesses namely Raghu Ram (P.W.1) and Dhanendra Sahu (P.W.2). Vague and general evidence of these two witnesses have been adduced. P.W.2 has stated that the factum of encroachment by defendant no.1 was told to him by one Dashru Ram Daroga. P.W. 1 has also stated that the fact of encroachment was told to him by Dhanendra Singh and Dashru Ram. Except their oral evidence in the above manner, no documentary evidence to prove the factum of encroachment has been brought on record by the plaintiff. In the opinion of this court, in the facts and circumstances the trial Court as well as the first appellate Court has rightly recorded the finding that the plaintiff could not establish that defendant no.1 has encroached upon any portion of the suit land as pleaded in the plaint.

(6) I do not find any perversity in the concurrent findings recorded by the two courts below. No substantial question of law is involved in this appeal. This appeal has no merits and the same is dismissed at the motion stage.

Sd/-
Sunil Kumar Sinha
Judge

Rao